

§ 405.1855

Board with respect to prehearing activities.

§ 405.1855 Evidence at Board hearing.

Evidence may be received at the Board hearing even though inadmissible under the rules of evidence applicable to court procedure. The Board shall give the parties opportunity for submission and consideration of facts and arguments and during the course of the hearing should, in ruling upon admissibility of evidence, exclude irrelevant, immaterial, or unduly repetitious evidence. The Board shall render a final ruling on the admissibility of evidence.

§ 405.1857 Subpoenas.

When reasonably necessary for the full presentation of a case, the Board may, either upon its own motion or upon the request of a party, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. Parties who desire the issuance of a subpoena shall, not less than 10 days prior to the time fixed for the hearing, file with the Board a written request therefor, designating the witnesses or documents to be produced, and describing the address, or location thereof with sufficient particularity to permit such witnesses or documents to be found. The request for a subpoena shall state the pertinent facts which the party expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpoena. Subpoenas, as provided for above, shall be issued in the name of the Board, and the Centers for Medicare & Medicaid Services shall assume the cost of the issuance and the fees and mileage of any witness so subpoenaed, as provided in section 205(d) of the Act, 42 U.S.C. 405(d).

§ 405.1859 Witnesses.

Witnesses at the hearing shall testify under oath or affirmation, unless excused by the Board for cause. The Board may examine the witnesses and shall allow the parties or their representatives to do so. Parties to the

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proceeding may also cross-examine witnesses.

§ 405.1861 Oral argument and written allegations.

The parties, upon their request, shall be allowed a reasonable time for the presentation of oral argument or for the filing of briefs or other written statements of allegations as to facts or law. Copies of any brief or other written statement shall be filed in sufficient number that they may be made available to all parties and to the Centers for Medicare & Medicaid Services.

§ 405.1863 Administrative policy at issue.

Where a party to the Board hearing puts into issue an administrative policy which is interpretative of the law or regulations, the Board will promptly notify to the Centers for Medicare & Medicaid Services.

§ 405.1865 Record of Board hearing.

A complete record of the proceedings at the hearing shall be made and transcribed in all cases. It shall be made available to the parties upon request. The record will not be closed until a decision has been issued.

§ 405.1867 Sources of Board's authority.

In exercising its authority to conduct the hearings described herein, the Board must comply with all the provisions of title XVIII of the Act and regulations issued thereunder, as well as CMS Rulings issued under the authority of the Administrator of the Centers for Medicare & Medicaid Services (see § 401.108 of this subchapter). The Board shall afford great weight to interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS.

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§ 405.1869 Scope of Board's decision-making authority.

The Board shall have the power to affirm, modify, or reverse a determination of an intermediary with respect to a cost report and to make any other modifications on matters covered by